SUHARTA DEVELOPMENT SDN. BHD.

v.

HO LIK SDN. BHD.

HIGH COURT, SHAH ALAM
TUAN MOHD HISHAMUDIN BIN MOHD YUNUS JC
[CIVIL SUIT NO. 22-467-91]
19 AUGUST 1993

PRACTICE & PROCEDURE: Appeal against dismissal of application for summary judgment - Whether there were merits in the defence.

The plaintiff filed a claim for possession of a piece of land (the said land). The plaintiff's application for summary judgment was dismissed by the SAR. The plaintiff appealed to the Judge and the appeal was allowed. Upon the hearing of further arguments in open Court, the question was whether the defendant's contention, that the plaintiff had no *locus standi* to institute the proceedings as at the time of filing the writ the plaintiff was not the registered owner of the land, amounted to a defence on the merits.

Held:

[1] The plaintiff's affidavit discloses that the qualified title to the said land was only issued to the plaintiff's principal on 27 December 1991. This confirms that on 29 November 1991 (the date of filing of the writ), the plaintiff's principal was not yet the registered owner of the land. As the said land was State land at the relevant date, only the State Director of Lands and Mines may institute proceedings against the defendant for trespass.

[2] There was no authority for the proposition made by Counsel for the plaintiff that under the National Land Code 1965 a person to whom a letter of approval of alienation has been issued in respect of a particular piece of State land, acquires a benefical interest in the land. Such a proposition is untenable under the system of law pertaining to land tenure particularly in the light of s. 78(3) of the National Land Code 1965.

[3] In an Order 14 application the statement of claim must be complete and good in itself and any defect or ommission cannot be corrected or supplemented by a subsequent affidavit.

[Order made in chambers set aside. Appeal against decision of SAR dismissed with costs].

Cases referred to:

Sidek bin Haji Muhamad & 461 Ors. v. The Government of the State of Perak & Ors. [1982] CLJ 244 / [1982] 1 MLJ 313 ***(refd)***

Gold Ores Reduction Co. v. Parr [1892] 2 QB 45 ***(foll)***

Legislation referred to:

National Land Code 1965, ss. 16, 48, 78(3)
Rules of the High Court 1980, O. 14

For the plaintiff - Visvanathan (Lim Chong Leong with him)
For the defendant - R. Sivarasa (Allan Wong with him)

JUDGMENT

Mohd Hishamudin bin Mohd Yunus JC: This is an appeal against the decision of the learned Senior Assistant Registrar.

On 20 December 1991, the plaintiff filed its writ claiming from the defendant, *inter alia*, possession of a piece of land known as Lot 9497, Mukim Ampang, Daerah Hulu Langat (hereinafter referred to as the "said land"). On 3 January 1992, the plaintiff filed an application for summary judgment (under Order 14, Rules of the High Court) against the defendant. The defendant filed its statement of defence on 11 January 1992. The plaintiff filed its reply on 13 February 1992.

The application for summary judgment was dismissed by the learned Senior Assistant Registrar on 17 April 1992. Hence, this appeal.

The appeal was heard in chambers before me on 29 January 1993.1 gave my decision on 8 March 1993. I allowed the appeal.

The defendant applied for further arguments in open Court. Further arguments were heard on 22 April 1993 and 10 July 1993. Having had the benefit of hearing further arguments, I am now persuaded by one - but only one - of the arguments advanced by learned Counsel for the defendant. I am now of the opinion that there is merit in the defendant's contention that the plaintiff, **at the time of filing the writ,** had no *locus standi* to institute the proceeding on the ground that the plaintiff was then not the registered owner of the land.

First, it is necessary to refer to the plaintiff's statement of claim. Paragraph 1 of the statement of claim reads:

> 1. Pada masa-masa yang material Gabungan Ikhtisas dan Usahawan Bumiputra Anak Selangor (selepas in dirujuk sebagai "Tuanpunya Tanah") adalah **pemilik**

> **benefisial** untuk dan bagi semua tanah yang berukuran lebih kurang 101.78 ekar yang merangkumi Lot 9497 Mukim Ampang, Daerah Hulu Langat (selepas ini dirujuk sebagai "Tanah Projek tersebut").
> [Emphasis is mine].

The entity "Gabungan Ikhtisas dan Usahawan Bumiputra Anak Selangor" (hereinafter referred to as "Gabungan Ikhtisas") referred to in the above paragraph as being the "beneficial owner" is not the plaintiff in this case. However, the legal relationship between Gabungan Ikhtisas and the plaintiff's interest in the case is shown in the following paragraph. Paragraph 2 of the statement of claim reads:

> 2. Melalui satu Perjanjian Usahasama bertarikh 24 April 1991 yang ditandatangani di antara Tuanpunya Tanah dan plaintif, plaintif telah diberimilik hak eksklusif untuk memajukan Tanah Projek tersebut kepada estet Campuran Komersial dan Kediaman. Justeru itu, pihak plaintif pada setiap masa yang material adalah berhak kepada milikan esklusif Tanah Projek tersebut.

Paragraph 3 of the statement of claim in essence alleges that the defendant has unlawfully trespassed on or occupied the said land.

The defendant, however, in its statement of defence denies any knowledge as to the claims stated in paragraphs 1 and 2 of the statement of claim and puts the plaintiff to strict proof. The defendant also denies the allegation in paragraph 3 of the statement of claim. The defendant, on the other hand, in its statement of defence and in its affidavit (of Chong Soo affirmed on 19 February 1992 - enclosure 7) claims that it has been operating a quail farm on the said land since 1982 with the express or implied consent or with the acquiescence of the State Government of Selangor.

Judging from the plaintiff's statement of claim and affidavits and the arguments of the learned Counsel for the plaintiff, the plaintiff appears to concede to the defendant's claim that it (i.e. the defendant) was already in occupation of the said land (and operating a quail farm) for a considerable period of time prior to the issuance of the letter of approval of alienation by the State Authority to Gabungan Ikhtisas. However, it is the plaintiff's contention that such occupation has throughout been illegal and that there has never been any express or implied consent or any acquiescence by the State Authority.

The plaintiff's supporting affidavit attempts to show how its principal, "Gabungan Ikhtisas", became the "beneficial owner" ("pemilik benefisial") of the said land. Paragraph 4 of the affidavit of Dato' Mohd Noor bin Hj. Ismail (affirmed on 2nd January 1992 - enclosure 3) states:

> 4. Pada masa yang material, Gabungan Ikhtisas dan Usahawan Bumiputra Anak Selangor (selepas ini dirujuk sebagai "Tuanpunya Tanah") adalah **pemilik benefisial** untuk dan bagi semua tanah yang merangkumi Lot 9497 Mukim Ampang, Daerah Ulu Langat (selepas ini dirujuk sebagai "Tanah Projek"). Tuanpunya Tanah t**elah diberimilik** Tanah Projek oleh Kerajaan Negeri Selangor melalui sepucuk **surat pemberimilikan tanah** yang bertarikh 25 March 1988 dari Pejabat Tanah Daerah UIu Langat, Kajang. Sesalinan surat tersebut dilampirkan di sini dan ditandakan sebagai Eksibit "A".
> [Emphasis is mine].

At the outset I must say that this paragraph does not satisfactorily explain how Gabungan Iktisas became a beneficial owner. It is also somewhat confusing. First, if indeed the said land has been alienated ("telah diberimilik") to the Gabungan Ikhtisas, then, why does the Gabungan Ikhtisas call itself the "beneficial owner" ("pemilik benefisial") instead of "registered owner" ("pemilik berdaftar")? Secondly, although the plaintiff claims that the said land has been alienated to Gabungan Ikhtisas, yet on examining exhibit "A" of enclosure 3 I find that, in the first place, the document exhibited is in fact not a "letter of alienation of land" ("surat pemberimilikan tanah" - if at all there is such a term!) in the sense that it is not a document which confers upon Gabungan Ikhtisas any title to the said land: in fact it is merely a letter of approval of alienation of the said land (a piece of State land) from the State Authority (perhaps this explains why plaintiff does not call itself the "registered owner"!). That this letter (dated 25 March 1988) is merely a letter of approval is clear from its contents which reads:

> Gabungan Ikhtisas dan Usahawan Bumiputra
> Anak-anak Selangor Darul Ehsan
> Yayasan Selangor Darul Ehsan
> Tingkat 12 Bangunan Yayasan Selangor
> Jalan Bukit Bintang
> Kuala Lumpur
>
> Tuan,
>
> Kelulusan Pemberimilikan Tanah Kerajaan dan Syarat Pembangunan Tanah di Mukim

Ampang Daerah Ulu Langat seluas 101.78 ekar

Adalah dengan sukacita dimaklumkan bahawa Majlis Mesyuarat Kerajaan Negeri Selangor Darul Ehsan pada 14 Oktober 1987, telah meluluskan pemberimilikan tanah seluas 101.78 ekar di dalam Mukim Ampang seperti bertanda merah di pelan yang dikembarkan bersama-sama ini.

Syarat-syarat kelulusan pemberimilikan tanah dan pembangunan tanah yang tersebut di atas adalah seperti berikut:

...[syarat-syarat]

Tetuan dikehendaki memohon secara rasmi tanah ini mengikut Peraturan 2 Kaedah-Kaedah Tanah Negeri Selangor Darul Ehsan Tahun 1966.

Sekian, terima kasih.

"BERKHIDMAT UNTUK NEGARA"

Saya yang menurut perintah,

t.t.

(MOHD SALLEH BIN DAUD)
Pentadbir Tanah Daerah,
Ulu Langat.

The above letter, in my opinion, exposes the weakness of the plaintiff's case. But there is yet another piece of evidence adduced by the plaintiff itself which, in my view, further weakens the plaintiff's case. The plaintiff's subsequent affidavit, affirmed by one Lim Chong Leong on 19 June 1992 (encl. 16), discloses that the qualified title to the said land was only issued to Gabungan Ikhtisas on 27 December 1991. This confirms that **at the time of the filing of the writ** (29 November 1991) Gabungan Ikhtisas was not yet the registered owner of the land. In other words, at the time of the filing of the writ, the said land was still State land.

In the present case, it is my finding (both in chambers and in open Court) that the defendant has not succeeded in satisfying the Court that there is a triable issue as regards to the plaintiff's allegation that, at the time of the filing of the writ, the defendant was an illegal occupier of the said land. The defendant has not been able to produce to the Court any title or temporary occupation licence; and the provisions of s. 48 of the National Land Code is clearly against the defendant: see *Sidek bin Haji Muhamad & 461 Ors. v. The Government of the State of Perak & Ors.* [1982] 1 MLJ 313. However, be that as it may, it is also my finding that the plaintiff, at the material time, had no *locus standi* to commence action against the defendant. The said land being State land at the relevant date, that is, 29 November 1991, only the State Director of Lands and Mines may institute proceedings against the defendant for trespass (see s. 16 of the National Land Code).

Encik Visvanathan, learned Counsel for the plaintiff, argues that since Gabungan Ikhtisas has been issued with a letter (exhibit "A") by the State Authority approving the alienation of the said land, therefore, Gabungan Ikhtisas has acquired a beneficial interest in the said land. With respect, I cannot accept the proposition that, in law, that letter confers upon Gabungan Ikhtisas a beneficial interest in the said land. I know of no authority for the proposition that under our National Land Code a person, to whom a letter of approval (of alienation) has been issued in respect of a particular piece of State land, acquires a beneficial interest in the land. Such a proposition is untenable under our system of law pertaining to land tenure particularly in the light of s. 78(3) of the National Land Code which clearly stipulates that:

> 78(3) The alienation of State land shall take effect upon the registration of a register document of title thereto pursuant to the provisions referred to in subsection (1) or (2), as the case may be; **and, notwithstanding that its alienation has been approved by the State Authority, the land shall remain State land until that time.**
> [Emphasis is mine.]

Encik Visvanathan, further submits that, alternatively, even if there might be a defect in the statement of claim as to the plaintiff's interest in the said land such defect is remedied by the plaintiff's subsequent affidavit (enclosure 16) which discloses that the plaintiff was subsequently issued with a qualified title in respect of the said land on 27 December 1991 (i.e one month after the filing of the writ). With respect, I also cannot accept this submission for the principle is that in an Order 14 application the statement of claim must be complete and good in itself; any defect or omission cannot be corrected or supplemented by the plaintiff's affidavit: *Gold Ores Reduction Co. v. Parr* [1892] 2 QB 45.

Accordingly, the order that I had made in chambers on 8 March 1993 is set aside, and the appeal against the decision of the Senior Assistant Registrar is dismissed with costs.